

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

COBBLER NEVADA, LLC,

Case No. 15-cv-12782

v.

Honorable Gershwin A. Drain

DOES 1-32,

NOTICE OF SCHEDULING CONFERENCE ORDER

You are hereby notified to appear on: February 8, 2016 at 2:30 p.m., in the chambers of the Honorable Gershwin A. Drain, Theodore Levin U.S. Courthouse, 231 W. Lafayette Blvd., Room 123, Detroit, Michigan 48226, for a scheduling conference on the above case.

Counsel are required to confer and submit a Rule 26(f) plan no later than one week prior to the scheduling conference. See Fed. R. Civ. P. 26(f).¹

Counsel shall be prepared to discuss the following at the scheduling conference:

- » A summary of the action and the principal factual and legal issues;
- » The Court's subject matter jurisdiction;

¹ Counsel are expected to attempt to narrow issues in advance. This includes the elimination of claims or defenses that are duplicative or unsustainable given the parties' present state of knowledge. The parties are expected to have withdrawn, without prejudice, any claim and any defense that is not *presently* sustainable under Rule 11 in view of evidence in hand, (see Fed. R. Civ. P. Rule 16(c)(1)). Leave to add claims or defenses later is afforded "freely when justice so requires," to a diligent party who only later acquires facts needed to properly state a related claim or an affirmative defense (see Fed. R. Civ. P. 15(a)). The court expects action on purported "affirmative defenses" that are actually a mere prediction of future action (e.g. a defenses that the complaint "fails to state a claim," citing Rule 12(b)(6), should ordinarily have already generated a motion to dismiss, not a mere boilerplate recitation.

- » Necessity of amendments to pleadings, additional parties, third party complaints, etc.
- » Alternative dispute resolution options; Consent to state case evaluation practice or desire for private facilitation/arbitration;
- » Progress of discovery and expected time required for completion of discovery;
- » Anticipated discovery disputes;
- » Issues which may appropriately be resolved by motion;
- » Consideration of magistrate judge consent jurisdiction or District Court bench trial;
- » Estimated trial length.

A scheduling order will be prepared with counsels' input at the conference.

Counsel are directed to discuss with their clients case evaluation and the prospect of obtaining authority to stipulate to be bound by the provisions of Michigan Court Rule 2.403, including the section dealing with sanctions.

Dated: January 7, 2016

/s/ Gershwin A. Drain
GERSHWIN A. DRAIN
United States District Judge

